

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>		GRANT NUMBER (FAIN): 96549401	DATE OF AWARD
			MODIFICATION NUMBER: 0	09/24/2004
			PROGRAM CODE: BF	MAILING DATE
			TYPE OF ACTION	10/01/2004
			PAYMENT METHOD:	ACH#
			ASAP	2787790
RECIPIENT TYPE: Special District			Send Payment Request to: Comptroller Branch, MF-10J	
RECIPIENT:			PAYEE:	
Port Authority of the City of St. Paul 345 St. Peter Street St. Paul, MN 55102 EIN: 41-6005524			Port Authority of the City of St. Paul 345 St. Peter Street St. Paul, MN 55102	
PROJECT MANAGER		EPA PROJECT OFFICER	EPA GRANT SPECIALIST	
John Young 345 St. Peter Street St. Paul, MN 55102 E-Mail: JWY@sppa.com Phone: 651-224-5686		Lois Betka 77 West Jackson Blvd., SM-5J Chicago, IL 60604-3507 E-Mail: Betka.Lois@epamail.epa.gov Phone: 312-886-6039	Francisca Ramos Assistance Section, MC-10J E-Mail: Ramos.Francisca@epamail.epa.gov Phone: 312-886-5945	
<b>PROJECT TITLE AND DESCRIPTION</b> PORT AUTHORITY OF ST PAUL - BROWNFIELD CLEANUP DALE STREET SHOPS The project will cleanup the eastern portion of the Dale Street Shops property contaminated with petroleum substances and the Hmong American Funeral Home property contaminated with non-petroleum hazardous substances.				
BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST	
10/01/2004 - 09/30/2006	10/01/2004 - 09/30/2006	\$480,000.00	\$480,000.00	
<b>NOTICE OF AWARD</b>				
Based on your Application dated 07/12/2004 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$400,000. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$400,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.				
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS			ORGANIZATION / ADDRESS	
U.S. EPA Region 5 Mail Code MCG10J 77 West Jackson Blvd. Chicago, IL 60604-3507			U.S. EPA, Region 5 Superfund Division.S-6J 77 West Jackson Blvd. Chicago, IL 60604-3507	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY				
Digital signature applied by EPA Award Official RICHARD C. KARL - DIRECTOR, SUPERFUND DIVISION				DATE
				09/24/2004

BF - 96549401 - 0 Page 2

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 400,000	\$ 400,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 80,000	\$ 80,000
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 480,000	\$ 480,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 101(39)	40 CFR PART 31

## Fiscal

[illegible]

## **Administrative Conditions**

### **TERMS AND CONDITIONS**

THIS AWARD IS IN RESPONSE TO THE RECIPIENT'S APPLICATION SUBMITTED JULY 12, 2004

#### **1. LOBBYING AND LITIGATION**

In accordance with OMB Circular A-21, A-87, or A-122, as appropriate, the recipient agrees that it will not use project funds, including the Federal and non-Federal share, to engage in lobbying the Federal Government or in litigation against the United States. The recipient also agrees to provide the EPA Form 5700-53, Lobbying and Litigation Certificate as mandated by EPA's annual appropriations act. A chief executive officer of any entity receiving funds under this Act shall certify that none of these funds have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The certification must be submitted in accordance with the instructions provided by the EPA award official and is due 90 days after the end of the project period.

#### **2. DEBARMENT AND SUSPENSION**

Recipient shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at <http://epls.arnet.gov>. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

#### **3. MBE/WBE**

In accordance with EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance programs, the recipient agrees to:

- a) Accept the applicable FY 2005 "fair share" goals negotiated with EPA by Minnesota Pollution Control Agency as follows:

	<b>MBE</b>	<b>WBE</b>
Combined Rate	2%	2%

If the recipient does not want to rely on applicable State's MBE/WBE goals, the recipient agrees to submit proposed MBE/WBE goals based on availability of qualified minority and women-owned businesses to do work in relevant market for construction, services, supplies and equipment. "Fair share" objectives must be submitted to the MBE/WBE Coordinator, Sharon Green, within 30 days of award and approved by EPA no later than 30 days thereafter.

- b) Ensure to the fullest extent possible that at least the FY 2004 "fair share" objective [see a) above] of Federal funds for prime contractors or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women and historically black colleges and universities.

- c) Include in bid documents "fair share" objectives of 2004 fair share percentage [see a) above] and require all of its contractors to include in their bid documents for subcontracts the negotiated fair share percentages.
- d) Follow the six affirmative steps stated in 40 CFR 30.44(b) 40 CFR 31.36(e), 35.3145(d), or 35.6580, as appropriate.
- e) For assistance awards for continuing environmental programs and assistance awards with institutions of higher education, hospitals and other non-profit organizations, submit an EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" to the EPA Award Official by October 30 of each year.
- f) In the event race and/or gender neutral efforts prove to be inadequate to achieve a fair share objective for MBE/WBEs, the recipient agrees to notify EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the fair share objective.
- g) Until the recipient has completed its fair share negotiations with EPA, it agrees to maintain state Agency's fair share objectives. Once the recipient has completed its fair share negotiations with EPA, it will apply those objectives. The recipient also agrees to include in its bid documents the applicable FY 2004 "fair share" objectives and require all of its prime contractors to include in their bid documents for subcontracts the applicable FY 2004 "fair share" percentages and to comply with paragraphs (c) through (e) above.

#### **4. NATIONAL HISTORIC PRESERVATION ACT**

Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable shall assist EPA in complying with any requirements of the Act and implementing regulations.

#### **5. PROCUREMENT OF RECYCLED PRODUCTS**

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

#### **6. QUALITY ASSURANCE PROGRAM PLAN**

A Quality Assurance Project Plan (QAPP) must be submitted to EPA at least 90 days prior to the planned start date for field sampling, and field sampling must not commence until approval of the QAPP is obtained from EPA. Costs associated with environmental measurement or data collection for monitoring are not allowable costs unless a QAPP and sampling plan are submitted and approved, nor will such costs be reimbursed.

In the event a generic, multi-site QAPP is submitted and approved, site-specific sampling plans for each assessment will need to be submitted 14 days prior to the planned start date for field sampling. The site sampling must include a site specific health and safety plan.

#### **7. RECYCLED PAPER**

In accordance with EPA Order 1000.25 and Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the

General Services Administration. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked E.O. 12873, *Federal Acquisition, Recycling, and Waste Prevention* in its entirety.

## 8. REPORTING - QUARTERLY

Programmatic status reports will be submitted to U.S. EPA on a quarterly basis, within 30 days following the end of the quarter. Financial Status reports will be submitted annually, 45 days after the anniversary date of the award. Final financial status reports will be submitted when all encumbrances are liquidated.

In describing the work accomplished during the reporting period, recipients are encouraged to describe related brownfields efforts in their quarterly reports; however, the report must clearly delineate which tasks are funded by the cooperative agreement and which items are funded from other sources.

## 9. SMALL BUSINESS IN RURAL AREAS

By accepting this agreement, the recipient agrees to comply with Section 129 of Public Law 100-590, the Small Business Administration Reauthorization and Amendment Act of 1988. Therefore, if the recipient awards a contract under this assistance agreement, it will utilize the following affirmative steps relative to Small Business in Rural Areas (SBRAs):

- a. Placing SBRAs on solicitation lists;
- b. Ensuring that SBRAs are solicited whenever they are potential sources;
- c. Dividing total requirements when economically feasible, into small tasks or quantities to permit maximum participation by SBRAs;
- d. Establishing delivery schedules, where the requirements of work will permit, which would encourage participation by SBRAs;
- e. Using the services of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce, as appropriate; and
- f. Requiring the contractor, if it awards subcontracts, to take the affirmative steps in subparagraphs a. through e. of this condition.

## **Programmatic Conditions**

### 1. Cleanup Terms and Conditions

**Please note that these Terms and Conditions (T&Cs) apply to brownfields grants under CERCLA 104(k).**

### I. GENERAL FEDERAL REQUIREMENTS

**Note: These terms and conditions contain references to EPA financial assistance regulations at 40 CFR Parts 30 and 31. 40 CFR Part 30 is applicable to non-profit and educational institution recipients and 40 CFR Part 31 is applicable to governmental recipients.**

#### A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: In implementing this agreement, the cooperative agreement recipient (CAR) shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding complies with all applicable Federal and State laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.
- b. The CAR must consider whether they are required to conduct cleanups under a State or Tribal response program. If the CAR chooses not to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure the proposed cleanup is protective of human health and

environment.

- c. **Optional T&C for CAR recipients that choose to participate in State or Tribal response programs that do not have a promulgated program.** If the State or Tribe does not have a promulgated Response Program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure protectiveness of human health and environment.
2. **Cooperative agreement recipients:** A term and condition or other legally binding provision shall be included in all agreements entered into with the funds, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA 104(k) Federal applicable laws and requirements include:
  - a. CERCLA 104(g) requires that grant recipients comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts "funded in whole or in part" with funds provided under this agreement. The grant recipient must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.
  - b. Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found at 40 CFR 40 CFR 31.36(e) or 40 CFR 30.44(b); OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

## **B. Changes to Sites and Cleanup Methods**

1.
  - a. The CAR must use funds provided by this agreement to clean up the brownfield site in the EPA approved scope of work. Any changes to the boundaries of the site must be approved by EPA in a revised scope of work.
  - b. The CAR may not make substantial changes to the cleanup planning process (or cleanup plan, if finalized at time of award) described in the scope of work without prior EPA approval.

## **II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS**

### **A. Term of the Agreement**

1. The term of this agreement is two years from the date of award, unless otherwise extended by EPA at the CAR's request.
2. If after 1 year from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the Agency may terminate this agreement.

### **B. Substantial Involvement**

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative

agreement.

- a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; review of project phases; and approval of substantive terms included in professional services contracts.
  - b. Substantial EPA involvement may include reviewing financial and program performance reports; and monitoring all reporting, record-keeping, and other program requirements.
  - c. EPA may waive any of the provisions in term and condition II.B.1., at its own initiative or upon request by the CAR. EPA will provide waivers in writing.
2. Affect of EPA's substantial involvement includes:
- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any affect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.
  - b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws.
  - c. The CAR remains responsible for ensuring costs that are allowable under applicable OMB Circulars.

#### **C. Cooperative Agreement Recipient Roles and Responsibilities**

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the cleanup activities at the site, if they do not have such a professional on staff.
2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors are consistent with the terms and conditions of this agreement.
3. Subgrants are defined at 40 CFR 31.3 and 40 CFR 30.2(f). The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36 or the Procurement Standards of 40 CFR Part 30, as applicable. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.

#### **D. Quarterly Progress Reports**

1. The CAR is required to submit progress reports on a quarterly basis (30 days after the end of each Federal fiscal quarter) to the EPA Project Officer. The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:
  - a. Documentation of progress at meeting the performance objectives, project narrative and project time line.
  - b. An update on project milestones.
  - c. A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.
- d. If applicable, quarterly reports must specify costs incurred at petroleum-only brownfields sites.
- e. Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and will relate EPA-funded

activities to the objectives and milestones agreed upon in the work plan including a list of sites where assessment or cleanup activities were completed. To the extent consistent with the scope of work for this agreement, activities undertaken with EPA funds to be included in quarterly performance reporting include those listed below. EPA form 9310-3 also complies with this requirement.

1. Acres per property(ies)
2. Cleanup completed
3. Types of contaminants removed/addressed
4. Acres of greenspace created/preserved
5. Number of properties with one(1) or more engineering/institutional controls
6. Redevelopment underway
7. Funds leveraged
8. Jobs leveraged
9. Health monitoring studies, insurance, or institutional controls

2. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR at petroleum contaminated sites identified in the EPA-approved scope of work.

3. The CAR must complete Property Profile Forms provided by EPA.

### **III. FINANCIAL ADMINISTRATION REQUIREMENTS**

#### **A. Cost Share Requirement -**

1. CERCLA §104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

#### **B. Eligible Uses of the Funds for the Cooperative Agreement Recipient**

1. To the extent allowable under the scope of work, cooperative agreement funds may be used for programmatic expenses necessary to clean up sites. Eligible programmatic expenses include activities described in Section IV of these terms and conditions. In addition, eligible programmatic expenses may include:

- a. Ensuring cleanup activities at a particular site are authorized by CERCLA 104(k) and the EPA approved scope of work;
- b. Ensuring that a cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);
- c. Using a portion of the grant to purchase environmental insurance if the purchase of such insurance is necessary to carry out cleanup activities;
- d. Any other eligible programmatic costs including costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants; and carrying out outreach pertaining to the cleanup activities.

2. **Local Governments Only.** No more than 10% of the funds awarded by this agreement may be used for brownfields program development and implementation (including monitoring of health and



institutional controls). The CAR must maintain records on funds to ensure that no more than 10% of its funds are used for brownfields program development and implementation (including monitoring of health and institutional controls).

### C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:

- a. Pre-cleanup environmental activities such as planning, inventory, site assessment, identification, and characterization. However, the CAR may request EPA approval for limited site assessment on a case-by-case basis when necessary to ensure protection of the environment and public health through cleanup actions;
- b. Development activities that are not brownfields cleanup activities (e.g., construction of a new facility or marketing of a property);
- c. Job training unrelated to performing a specific cleanup at a site covered by the grant;
- d. To pay for a penalty or fine;
- e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
- f. To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA §107;
- g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
- h. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.

2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars.

- a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 30 or 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grantee is required to carry out the activity under the grant agreement.
- b. Ineligible grant administration costs include:
  - (1) Preparation of applications for Brownfields grants;
  - (2) Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
  - (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
  - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;

(5) Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;

(6) Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;

(7) Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and

(8) Close out under 40 CFR 30.71 and 40 CFR 31.50.

#### **D. Grant Recipient Eligibility**

1. The CAR may only clean up sites *it owns*. The CAR must retain ownership of the site throughout the period of performance of the grant. For the purposes of this agreement, the term "owned" means fee simple title unless EPA approves a different arrangement.

#### **E. Obligations for Grant Recipients Asserting a Limitation on Liability from CERCLA §107**

1. EPA awarded this cooperative agreement to the CAR based on information indicating that the CAR would not use cooperative agreement funds to pay for a response cost at the site for which the CAR was potentially liable under CERCLA 107 based on its status as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Land Owner (ILO). The CAR must meet certain continuing obligations in order to maintain its status as a BFPP, CPO or ILO at the site. If the CAR fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA 104(k)(7)(C). These continuing obligations include:

(1) complying with land use restrictions and not impeding the effectiveness or integrity of institutional controls;

(2) taking reasonable steps with respect to hazardous substance releases;

(3) providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration; and

(4) complying with information requests and administrative subpoenas and legally required notices (applies to the criteria for bona fide prospective purchasers and contiguous property owners).

Notwithstanding the CAR's continuing obligations under this agreement, the CAR is subject to the applicable liability provisions of CERCLA governing **its** status as a BFPP, CPO, or ILO. CERCLA may require additional obligations to maintain the liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§101(35), 101(40), 107(b), 107(q) and 107(r).

#### **F. Interest-Bearing Accounts and Program Income**

1. Interest earned on advances are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a quarterly basis.

2. Any program income earned by the CAR will be added to the funds EPA has committed to this agreement and used only for eligible and allowable costs under the agreement as provided in 40 CFR 30.24(b)(1) or 40 CFR 31.25(g)(2), as applicable.

## **IV. CLEANUP ENVIRONMENTAL REQUIREMENTS**

### **A. Authorized Cleanup Activities**

1. The CAR shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action.
2. For cleanup of brownfields petroleum contaminated sites identified in the EPA-approved scope of work, an analysis of cleanup alternatives must include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures. The clean up method chosen must be based on this analysis.

### **B. Quality Assurance (QA) Requirements**

1. If environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

### **C. Community Relations and Public Involvement in Cleanup Activities**

1. All cleanup activities require a site-specific community relations plan that includes providing reasonable notice, opportunity for involvement, response to comments, and administrative records that are available to the public.

### **D. Administrative Record**

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include an analysis of reasonable alternatives including no action; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

### **E. Implementation of Cleanup Activities**

1. The CAR shall ensure the adequacy of each cleanup in protecting human health and the environment as it is implemented. Subject to the EPA notification and approval provision of Section I.B.1.b., the CAR is allowed to change cleanup activities as necessary based on comments from the public or any new information acquired.
2. If the CAR is unable or unwilling to complete the cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

### **F. Completion of Cleanup Activities**

1. The CAR shall ensure that the successful completion of a cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanups are complete. This documentation needs to be included as part of the administrative record.

## **V. OTHER CLEANUP GRANT REQUIREMENTS**

### **A. Inclusion of Special Terms and Conditions in Cleanup Documents**

1. The CAR shall meet the cleanup and other program requirements of the cleanup including:
  - a. In accordance with 40 CFR 31.42 or 40 CFR 30.53, the CAR shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with cleanup grant funds. Cooperative agreement recipients shall provide access to records relating to cleanups supported with cleanup grant funds to authorized representatives of the Federal government.
  - b. The CAR has an ongoing obligation to advise EPA if assessed any penalties resulting from environmental non-compliance at the site subject to this agreement.

### **B. Conflict of Interest**

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest or the appearance of the CAR's lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

- (i) The affected party,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

## **VI. PAYMENT AND CLOSEOUT**

For the purposes of these terms and conditions, the following definitions apply: "payment" is the U.S. EPA's transfer of funds to the CAR; "close out" refers to the process that the U.S. EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

### **A. Payment Schedule**

1. **Alternate 1.** If the approved budget for the project includes construction costs, EPA will pay the CAR on a reimbursement basis. The CAR must submit documentation of obligations and expenses incurred under the agreement to EPA's project officer for approval prior to obtaining payment from EPA under the following procedures\_\_\_\_\_.

2. **Alternate 2.** If the approved budget for the project includes construction costs, EPA will pay the CAR on a progress payment basis according to the following schedule\_\_\_\_\_.

3. **Alternate 3.** (Approved budget does not include construction costs) The CAR will be paid in advance provided it has funds management controls in place which meet the requirements of 40 CFR 30.22 or 40 CFR. §31.21, as applicable.

**B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 40 CFR 31.50 or 40 CFR 30.71 following expiration of the term of the agreement or expenditure of the funds awarded and completion of the activities described by the EPA approved scope of work.